



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Document No. AMS-FV-12-0041]

Mango Promotion, Research, and Information Order; Nominations of Foreign Producers and Election of Officers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Mango Promotion, Research, and Information Order (Order) to allow foreign producers, from countries exporting mangos to the United States, to nominate themselves or other foreign producers for appointment to the National Mango Board (Board). This change would increase the pool of foreign producer nominees. Upon further review, the proposed change to add flexibility to the timing of election of officers to the Board is not made in this rulemaking.

DATES: Effective [INSERT DATE 1-DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406-S, Stop 0244, Washington, D.C. 20250-0244; telephone: (202) 720-9915; toll free (888) 720-9917; fax: (202) 205-2800; email: Jeanette.Palmer@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mango Promotion, Research, and Information Order (Order) (7 CFR part 1206). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act (7 U.S.C. 7423) provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed

within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 - 612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as those having annual receipts of no more than \$7 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms, and the majority of mango producers, first handlers and importers would be considered small businesses. Foreign producer associations consisting of foreign producers would reflect the size of the producer entities. Although this criterion does not factor in additional monies that may be received by producers, handlers and importers of mangos, it is an inclusive standard for identifying small entities.

Mango producers are not subject to the assessment. First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment.

Furthermore, while domestic and foreign producers are not subject to assessment under the Order, such individuals are eligible to serve on the Board along with importers and first handlers. Currently, approximately three first handlers and 193 importers are subject to assessment under the Order.

U.S. production of mangos is located in California, Florida, Hawaii, Texas, and Puerto Rico according to the most recent U.S. Census of Agriculture (Agricultural Census) which was conducted in 2007. The Agricultural Census does not include California production because California has so few producers that publishing production data would reveal confidential information. According to the 2007 Agricultural Census published by the Department's National Agricultural Statistics Service, the U.S. had a total of 2,259 acres of mangos in 2007, which is the most recent data available. Out of the total acreage, 1,212 acres (54 percent) were in Florida, and the remaining 1,047 acres (46 percent) were in Hawaii, California, and Texas. The Agricultural Census does not collect mango production data for Puerto Rico. Individual acreage for Hawaii, California and Texas are not available. U.S. mango acreage rose by 321 acres between 2002 and 2007. Florida saw a decrease of 161 acres between 2002 and 2007 census, but acres in other States rose by 482 acres. Census data is published every five years. The next available census of agriculture data will be available in 2014.

Seven countries account for 99 percent of the mangos imported into the United States. These countries and their share of the imports (from April 1, 2011, through March 31, 2012) are: Mexico (68 percent); Ecuador (9 percent); Brazil (7 percent); Peru (7 percent); Guatemala (4 percent); Haiti (3 percent); and Nicaragua (1 percent). For the period from April 1, 2011, through March 31, 2012, the United States imported a total of 396,423 tons of mangos, valued at \$280 million.

The Board is composed of 18 members, including eight importers; two domestic producers; one first handler; and seven foreign producers. Nominations and appointments to the Board are conducted pursuant to section 1206.31 of the Order. Nominations for the importer, domestic producer, and first handler seats are made by U.S. importers, domestic producers, and first handlers, respectively. Foreign producers are nominated by foreign producer associations. The Board wants to increase the pool of nominees from the countries that export mangos to the United States by allowing foreign producers in major producing countries to nominate foreign producers to the Board.

Section 515(b)(2)(C) of the Act states the Secretary may make appointments from nominations made pursuant to the method set forth in the order. The Board wants to receive representation from all mango growing regions within the major mango exporting countries to the United States. Section 1206.31(g) of the Order limits the nominations for the foreign producer seats to the foreign mango organizations. At a meeting on September 11, 2009, the Board voted (9 out of 14 in favor) to allow foreign producers from the major countries exporting mangos to the United States to nominate themselves or other foreign producers for appointment to the Board. At a Board meeting, the Board decided to request this change. The change does not limit the foreign producer organizations' ability to submit nominations. The change increases the slate of candidates from which the Secretary may choose to appoint to the Board. It also provides an opportunity to increase diversity on the Board.

In addition, on July 11, 2012, the Board voted unanimously to amend the Order to provide the Board flexibility in the election of officers. Currently, section 1206.34 (b) of the Order requires the Board to select a chairperson and a vice chairperson at the start of its fiscal

period. Pursuant to section 1206.7, the fiscal period begins January 1. The term of office also begins January 1, pursuant to section 1206.32.

The Board must schedule Board meetings around several domestic and international growing regions in the mango industry. The Board had considered changing its fiscal year, but that change was rejected by the Board members because the Board's fiscal year flows with the mango production cycle, which is a calendar year.

Section 515(c)(3) of the Act allows the Board to meet, organize, and select from among its members its officers as the Board determines appropriate. Therefore, the Board proposed updating the Order to reflect the particular needs of the mango industry and to provide for a more efficient management method. However, as discussed further in the background section, no change is made to section 1206.32 of the Order.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been previously approved under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

The Order became effective on November 3, 2004, and it is authorized under the Act. The Board is composed of 18 members, including eight importers; two domestic producers; one first handler; and seven foreign producers. Nominations for the importer, domestic producer, and first handler seats are made by U.S. importers, domestic producers, and first handlers, respectively. Currently, foreign producers are nominated by foreign producer associations.

Under the Order, the Board administers a nationally coordinated program of research and promotion designed to strengthen the position of mangos in the marketplace and to establish, maintain, and expand U.S. markets for mangos. The program is financed by an assessment of three quarters of a cent (\$0.0075) per pound on first handlers and importers of 500,000 pounds or more of mangos annually. The Order specifies that first handlers are responsible for submitting assessments to the Board on a monthly basis and maintaining records necessary to verify their reporting. Importers are responsible for paying assessments on mangos imported for marketing in the United States through the U.S. Customs and Border Protection Service of the U.S. Department of Homeland Security.

The Board wants to increase the pool of nominees from the countries that export mangos to the United States by allowing foreign producers in major producing countries to nominate foreign producers to serve on the Board. The Board wants to receive representation from all mango growing regions within the countries that export mangos to the United States. Section 1206.31(g) of the Order limits the nominations for the foreign producer seats to the foreign mango organizations. At a meeting on September 11, 2009, the Board voted to allow foreign producers from the major countries exporting mangos to the United States to nominate themselves or other foreign producers for appointment to the Board. At a meeting, the Board decided to request this change. The change does not limit the foreign producer organizations'

ability to submit nominations. It increases the slate of candidates from which the Secretary may choose to appoint members to the Board.

This change is consistent with section 515(b)(2)(C) of the Act, which states the Secretary may make appointments from nominations made pursuant to the method set forth in the Order. The Board wants to expand its slate of candidates for the Secretary's decision for appointment to the Board. Accordingly, section 1206.31(g) of the Order would be revised to allow foreign producers to nominate themselves or other foreign producers to serve on the Board.

In addition, on July 11, 2012, the Board voted unanimously to amend the Order to provide the Board flexibility in the election of officers. Currently, section 1206.34 (b) of the Order requires the Board to select a chairperson and a vice chairperson at the start of its fiscal period. Pursuant to section 1206.7, the fiscal period begins January 1. The term of office also begins January 1, pursuant to section 1206.32.

The Board must schedule Board meetings around several domestic and international growing regions in the mango industry. The Board had considered changing its fiscal year, but that change was rejected because the Board's fiscal year flows with the mango production cycle, which is a calendar year. The Board proposed updating the Order to reflect the particular needs of the mango industry and to provide for a more efficient management method. The proposal noted that the Board believed that electing its officers at the last meeting of the fiscal year would be more advantageous for the Board. We have further considered this matter and believe that the Board could make suggestions concerning officers prior to the start of the fiscal period, and the new Board appointed for the term of office beginning January 1, could consider the prior Board's suggestions before the Board makes its recommendation to the Secretary for approval. This will ensure that newly appointed members who may not have served on the prior Board would have

the opportunity to participate in the election of officers. This action could be done on January 1, or soon thereafter through an electronic mail vote, by telephone, or other means of communications pursuant to section 1206.34(f) of the Order. The Board could specify these procedures in its bylaws.

A proposed rule concerning this action was published in the **Federal Register** on February 6, 2013 (78 FR 8441). Copies of the rule were made available through the Internet at www.regulations.gov, by the Department, and the Office of the Federal Register. That rule provided a 20-day comment period which ended on February 26, 2013. Two comments were received by the deadline.

Summary of Comments

The two comments received supported the proposed change to section 1206.31(g). One commenter made a recommendation regarding the last sentence in section 1206.31(g) of the Order that requires foreign producer nominees to be representative of the major countries exporting mangos to the United States. The commenter suggested that the term “major exporting country” be defined. As previously stated, Mexico, Ecuador, Brazil, Peru, Guatemala, Haiti, and Nicaragua account for 99 percent of the mango imports into the United States. This suggestion was not part of this rulemaking and as such, should be presented to the Board for their consideration. Accordingly, no change has been made to this section.

This commenter also was of the view with regard to the proposed change to section 1206.34, that the Board needs to determine the best time each year to hold election of officers. As discussed previously, the Board has the ability to determine an appropriate time each year to hold election of officers within a given year; however, in order to provide newly appointed

members the opportunity to participate in electing officers, the election should take place on or after January 1 as stated in the Order.

After consideration of all relevant material presented, the Board's recommendation, public comments and other information, it is hereby found that this rule, published in the **Federal Register** on February 6, 2013 (78 FR 8441), is consistent with and will effectuate the purposes of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this action needs to be in effect before the Board makes a call for nominations for the term of office beginning January 1, 2014. Further, this action helps to increase the pool of nominees to be considered for appointment to the Board. Finally, the proposed rule provided for a 20-day comment period, and the two comments received support the changes.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR part 1206 is amended as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411-7425 and 7401.

2. In § 1206.31, paragraph (g) is revised to read as follows:

§1206.31 Nominations and appointments.

* * * * *

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers and from foreign mango producers. Organizations of foreign mango producers shall submit two nominees for each position, and foreign mango producers may submit their name or the names of other foreign mango producers directly to the Board. The nominees shall be representative of the major countries exporting mangos to the United States.

* * * * *

Dated: June 26, 2013

Rex Barnes
Associate Administrator

Billing Code: 3410-02 P

[FR Doc. 2013-15747 Filed 07/01/2013 at 8:45 am; Publication Date: 07/02/2013]